

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DEC 30 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SIERRA CLUB; SOUTHERN BORDER
COMMUNITIES COALITION,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, in his official
capacity as President of the United States;
et al.,

Defendants-Appellants.

No. 19-17501

D.C. No. 4:19-cv-00892-HSG
Northern District of California,
Oakland

ORDER

Before: THOMAS, Chief Judge, and WARDLAW and COLLINS, Circuit Judges.

Plaintiffs Sierra Club and Southern Border Communities Coalition have filed an emergency motion to lift the district court's stay of its injunction pending appeal. The district court injunction permanently enjoined spending funds under 10 U.S.C. § 2808 for eleven specified border barrier construction projects, but the district court stayed the injunction pending appeal. Defendants oppose the motion to lift the stay.

We deny the request to lift the stay, without prejudice. The district court in the Western District of Texas has issued a substantially similar injunction precluding using § 2808 funds beyond what Congress has otherwise appropriated for border wall construction. *See El Paso Cty v. Trump*, No. EP-19-CV-66-DB (W.D. Tex. Dec. 10, 2019). In addition, the Supreme Court has already stayed an injunction previously granted by the district court in this case. *See Trump v. Sierra Club*, 140 S. Ct. 1 (2019). As the district court concluded, “the Supreme Court’s stay of this Court’s prior injunction order appears to reflect the conclusion of a majority of that Court that the challenged construction should be permitted to proceed pending resolution of the merits.” *Sierra Club v. Trump*, No. 4:19-cv-00892-HSG (N.D. Cal. Dec. 11, 2019). Given the existence of a spending injunction and the Supreme Court’s stay order, we decline to reverse the district court’s grant of a stay pending appeal at this time, without prejudice to renewal or reconsideration pending further developments. In doing so, we express no view as to the merits of the case.